

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

QUALITY LOAN SERVICE)
CORPORATION OF WASHINGTON,)
)
Plaintiff,)
)
v.)
)
SAMUEL M. WRIGHT, DIANA L.)
WRIGHT, INTERNAL REVENUE)
SERVICE, STATE OF WASHINGTON)
DEPARTMENT OF LABOR &)
INDUSTRIES, ISLAND COUNTY)
TREASURER, WASHINGTON)
DEPARTMENT OF REVENUE,)
)
Defendants.)
_____)

No. 2:21-cv-00024-MLP

**UNITED STATES' REPLY IN
SUPPORT OF SUMMARY
JUDGMENT**

NOTE ON MOTION CALENDAR:

July 2, 2021

Defendant United States of America moved the Court for summary judgment under Federal Rule of Civil Procedure 56 that \$153,559.07 of the surplus funds from the trustee's non-judicial foreclosure sale of 386 SE Pasek St., Oak Harbor, WA 98277 ("Subject Property") be awarded to the United States of America. This sum includes \$1,093.35 that interpleader plaintiff Quality Loan Service Corporation ("QLS") improperly awarded itself for filing this interpleader action.

Although QLS does not oppose the United States' claim on the interpleaded funds, QLS argues that it is entitled to the costs and fees it incurred from filing the interpleader and giving notice of the interpleader to potentially interested parties. *See* ECF No. 6 at 1. QLS is incorrect.

1 ***1. Interpleader expenses are not costs of “collecting or enforcing” a lien, and***
2 ***therefore cannot have priority.***

3 In its motion for summary judgment, the United States explained why its federal tax liens
4 have priority over a non-judicial foreclosure trustee’s claims. *See* ECF No. 5 at 11 (citing *U.S.*
5 *By & Through I.R.S. v. McDermott*, 507 U.S. 447 (1993) (“Absent provision to the contrary,
6 priority for purposes of federal law is governed by the common-law principle that ‘the first in
7 time is the first in right.’”). QLS does not contest this fundamental principle, instead arguing
8 that under 26 U.S.C. § 6323(e)(3) their costs and fees are an exception to the rule because they
9 were incurred as part of the non-judicial foreclosure. *See* ECF No. 6 at 2. The United States
10 does not dispute that genuine costs and fees incurred as part of the foreclosure sale itself fall
11 under the subsection (e)(3) exception, but costs and fees for filing an interpleader action do not.
12 *See Abex Corp. v. Ski’s Enterprises, Inc.*, 748 F.2d 513, 516-517 (9th Cir. 1984) (“Courts have
13 clearly held, however, that the existence of prior federal tax liens gives the government a
14 statutory priority over the interpleader plaintiff’s ability to diminish the fund by an award of
15 fees.”) (citing *Bank of America National Trust & Savings Assn. v. Mamakos*, 509 F.2d 1217,
16 1219–20 (9th Cir. 1975); *Campagna-Turano Bakery, Inc. v. United States*, 632 F.2d 39, 41 (7th
17 Cir.1980); *Spinks v. Jones*, 499 F.2d 339, 340 (5th Cir. 1974); *see also United States v. R.F. Ball*
18 *Construction Co.*, 355 U.S. 587, 78 S.Ct. 442, 2 L.Ed.2d 510 (1958)).

19 QLS incorrectly claims that state law in Washington changes this settled law that
20 interpleader costs and fees do not fall under the subsection (e)(3) exception by requiring a non-
21 judicial foreclosure trustee to deposit surplus funds and give notice. *See* ECF No. 6 at 1.
22 However, there are two problems with QLS’s argument.

23 First, QLS reads too much into Washington law. RCW § 61.24.080 only allows a trustee
24 to apply proceeds towards the “expense of sale, including a reasonable charge by the trustee and
25 by his or her attorney” (RCW § 61.24.080(1), emphasis added) and, later, to the “clerk’s filing
26 fee” for depositing excess proceeds with the clerk of the superior court of the county in which

1 the sale took place (RCW § 61.24.080(3)). Nowhere does the statute explicitly allow a trustee to
2 claim anything more than the filing fee in connection with the latter action. The filing fee here
3 should have been no more than \$240. *See*, Island County Superior Court & Clerk’s Fee
4 Schedule, <https://perma.cc/UXV2-AGLB>. Thus, even if QLS’s overall argument based on RCW
5 § 61.24.080 otherwise had merit and only state law were applied, the statute does not clearly
6 allow QLS to keep the full amount it retained.

7 Second, and more significantly, QLS misinterprets 26 U.S.C. § 6323. Subsection (e)(3)
8 states that its exception only applies to “the reasonable expenses, including reasonable
9 compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,
10” By QLS’s own admission, the interpleader only covers surplus funds and as a result by the
11 time the funds are deposited with the Court, the underlying collection—the foreclosure—has
12 already been accomplished and the “obligation” extinguished. Because the foreclosure and
13 collection are necessarily complete before any costs can be incurred as part of the interpleader
14 action, the costs and fees improperly withheld by QLS cannot fall under subsection (e)(3).

15 **2. *Washington law does not grant the interpleader expenses the same priority as***
16 ***QLS’s lien, so they cannot have priority over the federal tax lien.***

17 QLS ignores the interaction between Washington law and 26 U.S.C. § 6323. Under 26
18 U.S.C. § 6323(e), expenses covered in that subsection can only attain the same priority as the
19 original lien “to the extent that, under local law, any such item has the same priority as the lien or
20 security interest to which it relates.” The costs and fees QLS incurred in connection with this
21 interpleader do not qualify.

22 Specifically, as QLS notes, RCW § 61.24.080 governs how a trustee should apply funds
23 following a foreclosure sale. The statute is explicit that the cost incurred in handling excess
24 proceeds from the sale has a *lower* priority than “the obligation secured by the deed of trust.”
25 *Compare* RCW § 61.24.080(2) and RCW § 61.24.080(3). It would have been trivial for the
26 Washington legislature to include costs of filing an interpleader in the same priority category as

1 the obligation being foreclosed – all it had to do was expand RCW § 61.24.080(2) slightly to
2 cover them. It did not.

3 Under the plain language of the Washington statute, interpleader costs inhabit a lower
4 rung on the payment ladder, only implicated if there is a surplus. *See, e.g., Bert Kutty Revocable*
5 *Living Tr. ex rel. Nakano v. Mullen*, 175 Wash. App. 292, 305, 306 P.3d 994, 1000 (2013).
6 Thus, regardless of whether the interpleader costs actually fall within 26 U.S.C. § 6323(e)(3)’s
7 provision for costs of “collecting or enforcing the obligation secured,” local law does not vest
8 them with the “same priority” as the lien to which they relate. As a result, these amounts cannot
9 be deducted before the federal tax liens are paid in full. *See, e.g. United States v. Weathers*, No.
10 C18-5189 BHS, 2020 WL 4934247, at *3 (W.D. Wash. Aug. 24, 2020) (to be entitled to
11 costs/fees ahead of a federal tax lien under 26 U.S.C. § 6323(e)(3), lienholder must “establish as
12 a matter of law that such fees have the same priority as the underlying lien under Washington
13 law”), *Weathers*, No. C18-5189 BHS, slip op. (W.D. Wash. Dec. 1, 2020) (lienholder failed to
14 establish priority and therefore was not entitled to fees).

15 In sum, QLS’s opposition to the United States’ motion must fail, because QLS does not
16 (and cannot) establish that it was entitled to deduct its interpleader costs and fees before the
17 federal tax liens were paid in full. The tax liens have priority, and QLS should be ordered to
18 deposit with the Court the funds it improperly retained.

19 CONCLUSION

20 The United States of America asks that the Court order (1) that Quality Loan Service
21 Corporation be ordered to deposit the \$1,093.35 that it improperly awarded itself with the Court,
22

1 and (2) that the Court award \$153,559.07 of the surplus funds from the trustee's non-judicial
2 foreclosure sale of 386 SE Pasek St., Oak Harbor, WA 98277 to the United States.

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4 DATED this 2nd day of July, 2021.

5 Respectfully submitted,

6 DAVID A. HUBBERT
7 Acting Assistant Attorney General

8 /s/ James Petrila
9 JAMES PETRILA
10 Trial Attorney, Tax Division
11 U.S. Department of Justice
12 P.O. Box 683
13 Washington, D.C. 20044
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CERTIFICATE OF SERVICE

Defendant United States of America, by and through its undersigned counsel, hereby gives notice that on July 2, 2021 it caused true and correct copies of this United States' Reply In Support Of Summary Judgment to be delivered to registered parties via ECF, and on the following via U.S. Mail:

RESIDENT
386 SE PASEK ST
OAK HARBOR, WA 98277

OCCUPANT
386 SE PASEK ST
OAK HARBOR, WA 98277

ISLAND COUNTY TREASURER
1 NE 7TH STREET
COUPEVILLE, WA 98239

WASHINGTON DEPARTMENT OF REVENUE
PO BOX 47450
OLYMPIA, WA 98504-7450

CURRENT OCCUPANT
386 SE PASEK ST
OAK HARBOR, WA 98277

SAMUEL M. WRIGHT
386 SE PASEK ST
OAK HARBOR, WA 98277

DIANA L. WRIGHT
386 SE PASEK ST
OAK HARBOR, WA 98277

DIANA L. WRIGHT
326 NW 8TH AVE
OAK HARBOR, WA 98277

STATE OF WASHINGTON
DEPARTMENT OF LABOR & INDUSTRIES
COLLECTIONS
7273 LINDERSON WAY SW
TUMWATER, WA 98501 5414

STATE OF WASHINGTON
DEPARTMENT OF LABOR & INDUSTRIES
525 EAST COLLEGE WAY, STE H

Reply ISO Summary Judgment
(Case No. 2:21-cv-00024-MLP)

1 MOUNT VERNON, WA 98273-5500

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Reply ISO Summary Judgment
(Case No. 2:21-cv-00024-MLP)

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U.S. Department of Justice
Tax Division, Western Region
P.O. Box 683
Washington, D.C. 20044
Telephone: 202-307-6648